

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES VICTOR HOOPER,
a married man,

Plaintiff,

CIV. S-05-0244 MCE PAN PS

v.

HERBERT SANDLER, a U.S. Vessel;
MERION O. SANDLER, a U.S. Vessel;
WORLD SAVINGS and LOAN, an entity;
GOLDEN WEST SAVINGS ASSO., SERVICE
CO. INC., an entity,

ORDER

Defendants.

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Plaintiff paid the filing fee and commenced this action
February 7, 2004, for quiet title, breach of contract and fraud.
Defendants Herbert Sandler and Merion O. Sandler are the
principals of defendant World Savings Bank, FSB and its trustee,
defendant Golden West Savings Association Service Company.
Plaintiff borrowed \$190,000.00 from defendants and secured his

1 debt with an interest in plaintiff's residential property;
2 plaintiff apparently defaulted and now challenges the contract.
3 Defendants move to dismiss.

4 Fed. R. Civ. P. 12(b)(1) authorizes dismissal of a
5 complaint for "lack of jurisdiction over the subject matter."
6 While not asserted by defendants, lack of subject matter
7 jurisdiction may be raised sua sponte by a court at any time.
8 City of Kenosha v. Bruno, 412 U.S. 507, 511-12 (1973); O'Donnell
9 v. Wien Air Alaska, Inc., 551 F.2d 1141, 1145, n.3 (9th Cir.
10 1977); Ryther v. Lumber Products, Inc., 799 F.2d 1412, 1414 (9th
11 Cir. 1986).

12 "A party invoking the federal court's jurisdiction has
13 the burden of proving the actual existence of subject matter
14 jurisdiction." Thompson v. McCombe, 99 F.3d 352, 353 (9th Cir.
15 1996); see Fed. R. Civ. P. 8(a) (requiring that a pleading set
16 forth "a short and plain statement of the grounds upon which the
17 court's jurisdiction depends").

18 Plaintiff invokes only this court's admiralty
19 jurisdiction, referring to the individual defendants as "U.S.
20 Vessels," and citing 28 U.S.C. §§ 1333 (admiralty jurisdiction),
21 1330 (actions against foreign states) and Fed. R. Civ. P. 9(h)
22 (admiralty and maritime claims). Plaintiff asserts the court's
23 admiralty jurisdiction renders him "under a restricted special
24 appearance and the herein cause of action is wrapped in
25 restrictions, representations, and warranties with prejudice. .
26 ." Complaint, para. 9.

1 A federal court's authority to hear cases in admiralty
2 flows initially from the Constitution, which extends federal
3 judicial power to all Cases of admiralty and maritime
4 Jurisdiction. U.S. Const., Art. III, § 2. Congress has embodied
5 that power in a statute giving federal district courts original
6 jurisdiction of any civil case of admiralty or maritime
7 jurisdiction. 28 U.S.C. § 1333(1). Jerome B. Grubart, Inc. v.
8 Great Lakes Dredge & Dock Co., 513 U.S. 527, 531, 115 S.Ct. 1043,
9 1047 (1995). The United States exercises admiralty jurisdiction
10 over matters involving the high seas and navigable waters within
11 the jurisdiction of the United States, and vessels upon or
12 aircraft above such waters. 18 U.S.C. § 7. To ascertain whether
13 a contract is a maritime one depends upon the nature and
14 character of the contract, and the true criterion is whether it
15 has reference to maritime service or maritime transactions.
16 Norfolk Southern Railway Co. v. Kirby, 125 S.Ct. 385, 393, 73
17 USLW 4005 (2004).

18 Plaintiff has failed to meet his burden of proving this
19 court's admiralty jurisdiction over the complaint. Plaintiff
20 avers neither a maritime business purpose for the disputed loan
21 nor any facts to conclude the parties' contract references
22 maritime services or transactions. The disputed Deed of Trust,
23 attached to the complaint, references nothing maritime. Labeling
24 defendants "U.S. Vessels"¹ does not give rise to this court's

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26 ¹ 1 U.S.C. § 3 defines "vessel" as "every description of watercraft or
other artificial contrivance used, or capable of being used, as a means of

1 admiralty jurisdiction. Nor does plaintiff's filing of a UCC
2 Financing Statement.

3 Defendant's motion to dismiss is granted and the
4 complaint is dismissed.

5 Plaintiff may, within ten days after service of this
6 order, file and serve an amended complaint setting forth the
7 basis of this court's jurisdiction and a clear statement of
8 plaintiff's claims and request for relief. Plaintiff's failure
9 timely to comply with this order will result in a recommendation
10 this action be dismissed.

11 Plaintiff is also warned that further false or fanciful
12 representations (e.g., identifying defendants as "U.S. Vessels")
13 will be sanctioned by fine or dismissal. Fed. R. Civ. P. 11; see
14 also E. D. Cal. Local Rule 11-110.

15 So ordered.

16 Dated: August 17, 2005.

17 /s/ Peter A. Nowinski
18 PETER A. NOWINSKI
19 Magistrate Judge
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transportation on water."